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September 19, 1991 **RECEIVED**

SEP 20 1991

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Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M. Street, N.W.  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
Office of the Secretary

Re: Channel 54, Slidell, Louisiana  
File Nos. BPCT-900518KO  
BPCT-900726KG

Dear Ms. Searcy:

Transmitted herewith, on behalf of Caroline K. Powley d/b/a Unicorn Slidell, applicant in the above-captioned proceeding, is an original and three (3) copies of a response to the "Statement for the Record" filed by Trudy M. Mitchell.

Should any questions arise concerning this matter, kindly communicate with the undersigned.

Sincerely,

*Alan E. Aronowitz*

Alan E. Aronowitz  
Counsel for  
CAROLINE K. POWLEY  
d/b/a/ UNICORN SLIDELL

Enclosure: Response to Statement for the Record

cc: Selina Hinton (by hand delivery)

AEA:sj

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

SEP 19 1991

Federal Communications Commission  
Office of the Secretary

In re Applications of )

CAROLINE K. POWLEY )  
d/b/a UNICORN SLIDELL )  
Slidell, Louisiana )

File No. BPCT-900518KO

TRUDY M. MITCHELL )  
Slidell, Louisiana )

File No. BPCT-900726KG

For a Construction Permit for a )  
new UHF Commercial Television )  
Station to Operate on Channel 54, )  
Slidell, Louisiana )

To the Chief, Mass Media Bureau

**RESPONSE TO  
STATEMENT FOR THE RECORD**

Caroline K. Powley d/b/a Unicorn Slidell ("Unicorn"), applicant for a construction permit to build a new UHF Commercial Television Station to operate on Channel 54, Slidell, Louisiana, by its attorneys, hereby submits its Response to the Statement for the Record filed in this proceeding on behalf of Trudy M. Mitchell ("Mitchell"). In support, the following is respectfully shown.

1. In its Motion to Dismiss or Deny filed on June 25, 1991, Unicorn demonstrated that Mitchell's application was hopelessly and patently defective when tendered, should not have been accepted for filing, and is therefore subject to immediate dismissal pursuant to Section 73.3566(a) of the Commission's Rules. Among other things, it was established that, as tendered, Mitchell's technical proposal is in violation of the separation

requirements of Sections 73.610(d) and 73.698<sup>1</sup> and is replete with other deficiencies and errors that render it substantially incomplete and unacceptable for filing. That pleading also demonstrates that independent grounds exist for dismissal of Mitchell's application due to her failure to tender the proper filing fee with the application.

2. On June 24, 1991, Mitchell tendered an amendment to her pending application specifying, among other things, a new transmitter site. However, Unicorn demonstrated in the supplement to its motion that nothing in that amendment rectifies the defective nature of the application when it was filed or in any way militates against its inadvertent acceptance for filing. Unicorn also asserted that, in fact, the purported amendment was as replete with deficiencies and errors as the underlying application itself.

3. Mitchell did not respond to or address Unicorn's allegations until filing the instant statement. Therein, Mitchell asserts that in light of the amendment to change transmitter sites, Unicorn's motion to dismiss or deny is moot. Moreover, it is asserted in a footnote that Mitchell has demonstrated proper and timely payment of the fee application.

4. Mitchell's Statement for the Record, although untimely as a response to the allegations raised earlier, wholly misses and/or artfully dodges the point that, reduced to its essence, her application when filed was patently defective, should

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<sup>1</sup> As tendered, Mitchell's application specified no separation between the proposed Channel 54 facility and the existing Channel 49 facility in New Orleans. As a result, 100 percent short-spacing was effectively proposed. Mitchell's application did not recognize this fact or request a waiver of the rules.

never have been accepted for filing, and is now immediately dismissable. Mitchell's assertion that her initial application was returned because she used an obsolete application form is not relevant to the allegations raised with respect to her subsequently filed application that is the subject of this proceeding. Moreover, contrary to the assertion that Mitchell has demonstrated to the Commission that she properly and timely paid the appropriate filing fee for her application, that is simply untrue and contrary to the facts.<sup>2</sup> In any event, inasmuch as Mitchell's application was patently defected when filed, her June 7, 1991, amendment is simply irrelevant.<sup>3</sup>

5. Finally, Mitchell's statement states that additional engineering information needed to assist in the processing of her application will be forthcoming. Unicorn respectfully suggests, however, that the correction of these significant deficiencies at

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<sup>2</sup> This is the first time that Mitchell has addressed, on the record, allegations with respect to her failure to timely and properly submit the appropriate filing fee. Mitchell has offered no excuse for addressing those allegations at this late date, and no support is offered or apparent for the claim that she has demonstrated compliance with the filing fee rules.

<sup>3</sup> Mitchell's amendment stated that the amendment was to correct previous site coordinates. As noted previously by Unicorn and now demonstrated by Mitchell's statement, by no stretch of the imagination was that amendment a correction since it specifies an entirely new site. The instant statement suggests that the June 7, 1991, amendment was required because Mitchell lost her first proposed site. However, upon closer inspection, the July 19, 1991, letter purporting to establish the loss of the site is dated after the filing of Unicorn's motion to dismiss and after Mitchell's June 7, 1991, amendment. Clearly, her after-the-fact rationalization simply does not wash, particularly because that letter itself recognizes the problem with Channel 49 that Mitchell still does not directly acknowledge.

this late date and after they were pointed out by Unicorn is inadequate to overcome the substantial and fatal defects and omissions in the application as filed. Moreover, there is simply no basis to accommodate Mitchell's request that the Commission take no action on her application until she is afforded an opportunity to review and make any changes to her application that she may deem appropriate. Such action is wholly contrary to the Commission's longstanding policies and rules designed to dismiss patently defective and incomplete applications when they are tendered, so that compliant and grantable applications may be reached without unnecessary delay. See, e.g., Emmy Hahn Ltd. Partnership, 4 FCC Rcd 8336 (1989); Womens Media Investors of Dallas, Ltd., 49 FR 30115, 30117 (1984).

For the foregoing reasons, Unicorn renews its request that Mitchell's application should now be immediately dismissed without further delay and prejudice to Unicorn, a compliant applicant, and to the public to be served by the commencement of this new and important commercial television service.

Respectfully submitted,

CAROLINE K. POWLEY d/b/a  
UNICORN SLIDELL

By: 

B. JAY BARAFF

By: 

ALAN E. ARONOWITZ  
Her Attorneys

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September 19, 1991

**CERTIFICATE OF SERVICE**

I, Sandie Jordan, a secretary in the law offices of Baraff, Koerner, Olender & Hochberg, P.C., certify that on this 19<sup>th</sup> day of September, 1991, a copy of the foregoing "Response to Statement for the Record" was mailed, first-class U.S. mail, postage prepaid to:


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Sandie Jordan

\* Hand Delivered

AEA:sj  
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